

City of Alameda
Memorandum

To: Honorable Mayor and
Members of the City Council

From: John A. Russo
City Manager

Date: February 7, 2012

Re: Adopt a Resolution Accepting the Alameda Reuse and Redevelopment Authority's Assignment of Its Rights, Assets, Obligations, Responsibilities, Duties and Contracts, including the Economic Development Conveyance Agreement and Lease in Furtherance of Conveyance; Authorize Issuance of a Letter to the Office of Economic Adjustment Requesting Designation of the City or the City's Designee as the Local Redevelopment Authority for Naval Air Station Alameda; and Authorize Execution of Documents with the United States Navy Necessary to Implement the City as Successor to the ARRA

BACKGROUND

In late December 2011, the California Supreme Court announced its ruling in the California Redevelopment Association v. Matosantos case finding the Dissolution Act (AB x1 26) constitutional and the Alternative Redevelopment Program Act (AB x1 27) unconstitutional. The Court's decision means that all redevelopment agencies in California will be dissolved under the constitutional Dissolution Act, and none will have the opportunity to opt into continued existence under the unconstitutional Alternative Redevelopment Program Act. As a result, the City of Alameda's Community Improvement Commission (CIC) will no longer exist as of February 1, 2012. The City of Alameda has elected to become the successor agency to the CIC to satisfy enforceable obligations of the CIC and administer the dissolution of the CIC, thereby maintaining local control over the future of local assets.

Staff has also evaluated the implications that the dissolution of the CIC on February 1st will have on the Alameda Reuse and Redevelopment Authority (ARRA), a joint powers authority (JPA) between the City and CIC. While the Dissolution Act did not invalidate JPAs comprised of redevelopment agencies or the existing leases, contracts and obligations of those JPAs pursuant to Section 34178(b)(3), there is concern that the ARRA would not be able to enter into future contracts or leases given that the City and the City as successor agency to the CIC would be the only party represented in the JPA. As a result, the ARRA on January 31, 2012 assigned its rights, obligations, responsibilities, duties and contracts, including the Economic Development Conveyance Agreement (EDC Agreement) and the Lease in Furtherance of Conveyance (LIFOC)

between the United States Navy (Navy) and ARRA, subject to (i) the City or the City's designee accepting such assignment, (ii) Office of Economic Adjustment's (OEA) designation of the City or the City's designee as the Local Redevelopment Authority (LRA) for NAS Alameda pursuant to the federal Base Closure and Realignment Act (BRAC), and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

DISCUSSION

Consistent with the ARRA's actions, staff recommends that the City take the following actions to protect the ability to enter into new leases, licenses and contracts, which generate significant local revenue necessary to manage and develop the former base, and to dispose of and develop the former NAS Alameda property:

- 1) This evening, staff recommends that the City accept the ARRA's assignment of its rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC; authorize the issuance of a letter to OEA requesting designation as the LRA for the former NAS Alameda property; and authorize execution of documents with the Navy necessary to implement the City as successor to ARRA.
- 2) On February 8, 2012, staff will issue a letter to OEA requesting designation as the LRA for the former NAS Alameda property.
- 3) Upon approval by OEA designating the City as the LRA for the former NAS Alameda property, staff will issue a letter to the Navy notifying them of the new LRA designation and requesting execution of documents necessary to implement the City as successor to ARRA.

Upon acceptance by the City, a new department of the City will be created to manage and implement development of Alameda Point. It is common that cities act as the LRA pursuant to BRAC for their former bases, including the Marine Corps Air Station in Tustin, California; Naval Air Station Glenview in Glenview, Illinois; Fort Pickett in Nottoway County, Virginia; and Naval Shipyard Philadelphia, in Philadelphia, Pennsylvania.

Staff explored other governance options, including replacing the CIC with another appropriate entity to maintain the ARRA as a JPA, and forming a nonprofit Economic Development Corporation (EDC). There is no other local Alameda entity that staff identified that could replace the CIC and still preserve the broad powers of the ARRA required for managing and developing the base. Additionally, staff did not find a non-local entity appropriate for involvement in the local development of NAS Alameda.

The EDC option is also not recommended: staff cannot be certain that a new EDC would meet BRAC's LRA requirements; the lack of a truly public entity to oversee and

manage the development of the base, even if the City Councilmembers also acted as its governing board, is problematic; and finally, staff has concerns about how separate the private, nonprofit entity realistically could be from the City in terms of staffing and other organizational issues.

As a mid- to long-term solution to the governance of the former NAS Alameda, staff does support, and is actively involved in, pursuing current and future legislative actions to create separate development authorities for former bases, and/or to reinvent redevelopment agencies with special provisions for former military properties. This option is not a near-term solution because Alameda needs to preserve and protect the ARRA's existing lease revenues and obligations now.

FINANCIAL IMPACT

There is no financial impact to the ARRA upon adoption of this Resolution. There is also no expected financial impact to the City upon acceptance of the assignment because there are significant lease revenues generated by the former NAS Alameda and a substantial existing fund balance to cover budgeted and foreseeable future expenditures. Staff also expects that ARRA annual rents payable under leases, which will be assigned to the City upon its acceptance of the assignment, will exceed anticipated annual expenses on a going forward basis. Additionally, there are no known contingent liabilities, and ARRA does not hold title to known contaminated property.

Upon conveyance of the property from the Navy to the City (instead of ARRA) all liability related to unforeseen environmental conditions or issues pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) would remain with the Navy in perpetuity per CERCLA and Section 330 of the 1993 National Defense Authorization Act. As a result, the transfer of all of the property would not place any additional environmental liability on the ARRA or City. Lastly, the City will be named as the first insured (instead of additional insured) on the ARRA's existing Pollution Liability Limitation environmental insurance policy upon acceptance of the ARRA's assignment by the City. Lastly, the Dissolution Act limits the liability of successor agencies, which we would argue applies in this situation.

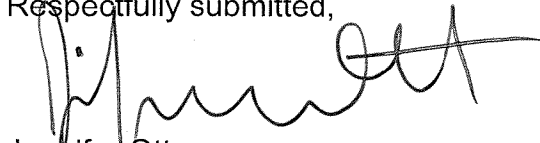
ENVIRONMENTAL REVIEW

The Resolution is exempt from the requirements of the California Environmental Quality Act under 14 C.C.R. Sec. 15378(b)(4) because it is not a project and does not commit to any project for program that may result in a potentially significant environmental impact.

RECOMMENDATION

- 1) Adopt a Resolution accepting the ARRA's assignment of its rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC;
- 2) Authorize issuance of a letter to the OEA requesting designation of the City or the City's designee as the LRA for NAS Alameda; and
- 3) Authorize execution of documents with the Navy necessary to implement the City as successor to the ARRA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jennifer Ott', with a stylized flourish at the end.

Jennifer Ott
Chief Operating Officer – Alameda Point

JO:rv

Exhibits:

- 1) Draft letter to the Office of Economic Adjustment Requesting Designation of the City or the City's Designee as the Local Redevelopment Authority for Naval Air Station Alameda
- 2) Draft letter to the Department of the Navy notifying them of the new LRA designation and requesting execution of documents necessary to implement the City as successor to ARRA

DRAFT

CITY OF ALAMEDA LETTERHEAD

[Date]

Mr. Patrick O'Brien, Director
Office of Economic Adjustment
2231 Crystal Drive,
Suite 520
Arlington, VA 22202

Recognition as Local Redevelopment Authority for Former Naval Air Station Alameda

Dear Mr. O'Brien:

The Alameda Reuse and Redevelopment Authority ("ARRA") is recognized by the Office of Economic Adjustment ("OEA") as the implementing local redevelopment authority for the former Naval Air Station Alameda ("NAS Alameda"). As the recognized LRA for NAS Alameda, the ARRA executed that certain *Memorandum of Agreement between the United States of America acting by and through the Secretary of the Navy, United States Department of the Navy, and the Alameda Reuse and Redevelopment Authority for Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority* dated June 6, 2000 (the "EDC Agreement"). Additionally, ARRA and the Navy executed that certain *Lease in Furtherance of Conveyance between the United States of America acting by and through the Secretary of the Navy, United States Department of the Navy, and the Alameda Reuse and Redevelopment Authority for Former Naval Air Station Alameda*, dated June 6, 2000 ("LIFOC").

By operation of California State law, the Community Improvement Commission, a member of the ARRA joint powers authority, will cease to exist on or about February 1, 2012. Accordingly, the ARRA, by Resolution No _____ dated _____, 2012 ("ARRA Resolution" attached), authorized the ARRA Executive Director to assign to the City of Alameda all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC ("Assignment," attached), subject to (i) the City accepting such Assignment, (ii) OEA's designation of the City as the local redevelopment authority for NAS Alameda, and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

DRAFT

Pursuant to City of Alameda Resolution No. ____ dated _____, 2012, the City authorized the City Manager to accept the Assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC, subject to OEA designating the City as the local redevelopment authority for NAS Alameda and the Navy executing documents necessary to implement the City as successor to ARRA ("City Resolution" attached).

Accordingly, the City of Alameda hereby requests that OEA recognize the City of Alameda as the implementing local redevelopment authority for NAS Alameda so the City may implement the approved Reuse Plan for NAS Alameda and fulfill ARRA's obligations under the EDC Agreement and LIFOC. The City of Alameda also requests that OEA consent to the assignment of its current grant agreement for an Economic Development Strategy with the ARRA to the City of Alameda.

The City of Alameda looks forward to receiving OEA's recognition as the local redevelopment authority for NAS Alameda. If you have any questions or require additional information, please call me directly at _____ or contact me by email at _____. Alternatively, you may call our counsel George Schlossberg directly at 202-828-2418 or contact him by email at george.schlossberg@kutakrock.com.

Sincerely,

City of Alameda

By: John Russo, City Manager

Attachments: as stated.

cc. w/o attachments:

Janet Kern, Esq., Alameda City Attorney
Donna Mooney, Esq., Assistant City Attorney
Ms. Jennifer Ott, Chief Operating Officer – Alameda Point
George Schlossberg, Esq.

DRAFT

CITY OF ALAMEDA LETTERHEAD

[Date]

Commanding Officer
Southwest Division
Engineering Field Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132

Recognized Local Redevelopment Authority for Former Naval Air Station Alameda

Dear Sir or Madam:

The Alameda Reuse and Redevelopment Authority ("ARRA") was previously recognized by the Office of Economic Adjustment ("OEA") as the implementing local redevelopment authority for the former Naval Air Station Alameda ("NAS Alameda"). As the recognized LRA for NAS Alameda, the ARRA executed that certain *Memorandum of Agreement between the United States of America acting by and through the Secretary of the Navy, United States Department of the Navy, and the Alameda Reuse and Redevelopment Authority for Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority* dated June 6, 2000 (the "EDC Agreement"). Furthermore, the ARRA and the Navy executed that certain *Lease in Furtherance of Conveyance between the United States of America acting by and through the Secretary of the Navy, United States Department of the Navy, and the Alameda Reuse and Redevelopment Authority for Former Naval Air Station Alameda*, dated June 6, 2000 ("LIFOC");

By operation of California State law, the Community Improvement Commission, a member of the ARRA joint powers authority, will cease to exist on or about February 1, 2012. Accordingly, the ARRA, by Resolution No _____ dated _____, 2012 ("ARRA Resolution" attached), authorized the ARRA Executive Director to assign to the City of Alameda all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC ("Assignment," attached), subject to (i) the City accepting such Assignment, (ii) OEA's designation of the City as the local redevelopment authority for NAS Alameda, and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

Recognized Local Redevelopment Authority for Former Naval Air Station Alameda

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DRAFT

Pursuant to City of Alameda Resolution No. ____ dated _____, 2012, the City authorized the City Manager to accept the Assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC, subject to OEA designating the City as the local redevelopment authority for NAS Alameda and the Navy executing documents necessary to implement the City as successor to ARRA ("City Resolution" attached).

The City of Alameda was designated as the local redevelopment authority for NAS Alameda on _____, 2012 ("OEA Recognition Letter" attached). Accordingly, the City of Alameda hereby requests that the Navy execute documents necessary to implement the City as successor to ARRA so the City may implement the approved Reuse Plan for NAS Alameda and fulfill ARRA's obligations under the EDC Agreement and LIFOC.

In addition to the other addressees set forth in the EDC Agreement and LIFOC, please direct all correspondence and notices under the EDC Agreement and LIFOC to:

City Manager
City of Alameda
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501-4566

If you have any questions or require additional information, please call me directly at _____ or contact me by email at _____. Alternatively, you may call our outside counsel George Schlossberg directly at 202-828-2418 or contact him by email at george.schlossberg@kutakrock.com.

DRAFT

Sincerely,

City of Alameda

By: John Russo, City Manager

Attachments: as stated.

cc. w/o attachments:

Janet Kern, Esq., Alameda City Attorney
Donna Mooney, Esq., Assistant Alameda City Attorney
Ms. Jennifer Ott, Chief Operating Officer – Alameda Point
George Schlossberg, Esq.

CITY OF ALAMEDA RESOLUTION NO. _____

ACCEPTING THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY'S ASSIGNMENT OF ITS RIGHTS, ASSETS, OBLIGATIONS, RESPONSIBILITIES, DUTIES AND CONTRACTS, INCLUDING THE ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT AND LEASE IN FURTHERANCE OF CONVEYANCE

Approved as to Form


City Attorney

WHEREAS, the former Naval Air Station Alameda ("NAS Alameda") encompasses the former Naval facilities and grounds located within the City of Alameda ("City"); and

WHEREAS, the Defense Base Closure and Realignment Commission recommended the closure of NAS Alameda pursuant to the Defense Base Closure and Realignment Act of 1990, as amended ("Base Closure Act"); and

WHEREAS, the Alameda Reuse and Redevelopment Authority ("ARRA") was recognized by the Office of Economic Adjustment ("OEA"), on behalf of the Secretary of Defense, as the local redevelopment authority for Naval Air Station Alameda; and

WHEREAS, the ARRA prepared and adopted a plan to guide the reuse and redevelopment of NAS Alameda ("Reuse Plan"), that was subsequently approved by the United States Department of Housing and Urban Development; and

WHEREAS, NAS Alameda was closed by the Department of the Navy pursuant to the Base Closure Act; and

WHEREAS, the ARRA and the Navy executed that certain Memorandum of Agreement between the United States of America acting by and through the Secretary of the Navy, United States Department of the Navy, and the Alameda Reuse and Redevelopment Authority for Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority dated June 6, 2000 (the "EDC Agreement"); and

WHEREAS, the EDC Agreement provided for the no-cost Economic Development Conveyance of a portion of the former NAS Alameda to the ARRA pursuant to Section 2905(b)(4) of the Base Closure Act; and

WHEREAS, pursuant to the EDC Agreement, the ARRA and the Navy executed the Lease in Furtherance of Conveyance between the United States of America acting by and through the Secretary of the Navy, United States

Department of the Navy, and the Alameda Reuse and Redevelopment Authority for the Former Naval Air Station Alameda, dated June 6, 2000 ("LIFOC"); and

WHEREAS, the Community Improvement Commission, a member of the ARRA joint powers authority, will cease to exist by operation of California State law on or about February 1, 2012; and

WHEREAS, the ARRA, by Resolution authorized the assignment to the City or the City's designee, of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC ("Assignment"), subject to (i) the City or the City's designee accepting such Assignment, (ii) OEA's designation of the City or the City's designee as the local redevelopment authority for NAS Alameda, and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA; and

WHEREAS, the City desires to implement the Reuse Plan, the EDC Agreement and the LIFOC and to accept ARRA's Assignment of ARRA's rights, obligations, responsibilities, duties and contracts, including the EDC Agreement and the LIFOC; and

WHEREAS, the City desires to seek (i) OEA's designation of the City as the local redevelopment authority for NAS Alameda, and (ii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ALAMEDA, AS FOLLOWS:

Section 1: That the City authorizes the City Manager to accept ARRA's Assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement and LIFOC, subject to (i) OEA designating the City as the local redevelopment authority for NAS Alameda, and (ii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

Section 2: That the City shall apply to OEA for official recognition as the local redevelopment authority for the former Naval Air Station Alameda.

Section 3: That the City shall execute documents with the Navy necessary to implement the City as successor to ARRA.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 7th day of February, 2012, by the following vote to wit:

AYES

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 8th day of February, 2012.

Lara Weisiger, City Clerk
City of Alameda